

HONIGMAN LLP

2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
Telephone: (313) 465-7590
Facsimile: (313) 465-7591
Lawrence A. Lichtman (MI Bar #P35403)
Admitted *Pro Hac Vice*
Attorneys for Midwest Tool and Cutlery Company

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re:	Chapter 11
SEARS HOLDING CORPORATION, <i>et al.</i> , ¹	Case No. 18-23538 (RDD)
Debtors.	(Jointly Administered)

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**LIMITED OBJECTION OF MIDWEST TOOL AND CUTLERY
COMPANY TO DEBTORS' NOTICE OF CURE COSTS AND
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

The Debtors also include SHC Licensed Business LLC (3718), filed as Case No. 18-23616, and SHC Promotions LLC (9626), filed as Case No. 18-23630 (the "Additional Debtors"). The Additional Debtors each filed a motion in their respective chapter 11 case requesting joint administration with the Debtors for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

**CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH
GLOBAL SALE TRANSACTION**

Midwest Tool and Cutlery Company (“Midwest Tool”), by and through its undersigned counsel, hereby submits this Limited Objection (the “Objection”) to the Debtors’ *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1731] (the “Cure Notice”). In support of the Objection, Midwest Tool states as follows:

BACKGROUND

1. Beginning on October 15, 2018 (the “Petition Date”) and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On January 18, 2019, the Debtors filed their *Schedules of Assets and Liabilities for Sears, Roebuck And Co.* [Docket No. 1711] (the “Schedules”). Schedule E/F identifies Midwest Tool as a general unsecured creditor having a prepetition claim in the amount of \$239,809.06. *See Schedules, Schedule E/F, No. 11645.* As described below, this amount is significantly understated. In addition, Schedule G errantly identifies the purchase orders issued by Debtor Sears, Roebuck and Co. to Midwest Tool (the “Purchase Orders”) as executory contracts. *See Schedules, Schedule G, No. 2.1,984.*

3. On November 19, 2018, the Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816].

4. On January 18, 2019, the Debtors filed their *Successful Bidder Notice* [Docket No. 1730], which, among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., to acquire all or substantially all of the Global Assets (as defined in the Successful Bidder Notice), was the highest or best offer for the Global Assets.

5. On January 18, 2019, the Debtors filed the Cure Notice. Exhibit A to the Cure Notice lists each of the executory contracts and unexpired leases that the Debtors may seek to assume and assign to the Buyer in connection with the Global Asset Sales Transaction (as defined in the Successful Bidder Notice). There are no contracts between Midwest Tools and any of the Debtors listed on Exhibit A to the Cure Notice.

LIMITED OBJECTION

6. Notwithstanding the Debtors' characterization of the Purchase Orders as executory contracts in Schedule G, they are not. With the exception of Debtor Sears, Roebuck and Co.'s obligation to pay the amount owed to Midwest Tool, there are no continuing obligations of the parties under the Purchase Orders.

7. The Debtors also understated the prepetition amount owed to Midwest Tool in their Schedules. The actual prepetition amount owed by Debtor Sears, Roebuck and Co. to Midwest Tool is not less than \$312,556.07. *See Exhibit A* hereto, bearing Midwest Tool's statements of account.

8. While the Debtors have not designated the Purchase Orders for assumption and assignment to the Buyer, in an abundance of caution and in the event that the Debtors may hereafter seek to assume the Purchase Orders and assign them to the Buyer, Buyer's designee or any other proposed assignee, Midwest Tool makes this Objection to clarify that the Purchase Orders may not be assumed and assigned because they are not executory. And if the Court were to hereafter determine that the Purchase Orders are, in fact, executory in nature, the cure amount that would be required to be paid to Midwest Tool, pursuant to Section 365(b)(1) of the Bankruptcy Code and in connection with such assumption and assignment, is not less than \$312,556.07.

RESERVATION OF RIGHTS

9. Midwest Tool reserves all of its rights and remedies in connection with the Global Asset Sale Transaction, and otherwise, including the right to contest any proposed assumption and assignment of any of the Purchase Orders, to require that the accurate cure amount be paid to Midwest Tool in connection with such an assumption and assignment, and to contest the form and adequacy of any assurance of future performance provided by the Debtors. Additionally, Midwest reserves the right to amend, supplement, and/or modify this Objection.

Dated: January 25, 2019

Respectfully submitted,

HONIGMAN LLP, *Counsel to Midwest Tool
and Cutlery Company*

By: /s/ Lawrence A. Lichtman
Lawrence A. Lichtman
Admitted Pro Hac Vice
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226-3506
313-465-7000
llichtman@honigman.com